

Internal Revenue Service

Department of the Treasury
Quality Review, Stop 516-D
401 W. Peachtree St. NW.
Atlanta, GA 30365

District
Director

Person to Contact:

Contact Telephone Number:

Date: MAR 06 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Applicant:

We have considered your application for recognition of exemption from Federal income Tax under section 501(c)(4) of the Internal Revenue Code of 1986.

The information submitted shows that you were incorporated as a nonprofit organization in the state of [REDACTED] on [REDACTED]. Your purposes as stated in your articles of incorporation are to provide an entity to which can be and will be delegated and assigned the powers necessary and proper to maintain and administer common properties and facilities of the [REDACTED] residential subdivision development which has been developed and is being developed on real property located in [REDACTED] and further to administer and enforce the provisions of the Declaration of Covenants, Conditions and Restrictions for [REDACTED].

Your activities consist of collecting annual dues from members for the purpose of hiring contractors to landscape, maintain the entrance of the subdivision and enforce restrictive covenants. Lot [REDACTED] contains a lake owned by the City, and Lot [REDACTED] which you own contains a fishing pier and two picnic tables. This area is not open for use by the general public. Residence are allowed to use the facility free of charge; however, the area is locked to prevent the use by the general public. Membership in the association is voluntary. The subdivision consists of [REDACTED] lots of which [REDACTED] are members.

Section 501(c)(4) of the Code provides for the exemption of civic leagues or organizations not organized for profit and operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the

[REDACTED]

promotion of social welfare if it is primarily engaged in promoting in some way the common and general welfare of the people of the community.

Revenue Ruling 72-102, 1972-1 C.B. 149 held that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code.

Revenue Ruling 74-99, 1974-2, C.B. 131, modified Revenue Ruling 72-102 and required that for a homeowner's association to qualify for exemption under section 501(c)(4) of the Code it must: 1) serve a community bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or unit or district thereof, 2) not conduct activities directed to the exterior maintenance of private residence, and 3) make common areas or facilities available for the use and enjoyment of the general public. It is stated that while an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or unit or district thereof. Further, it is clarified that Rev. Rul 72-102 was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks, and streetlights, which access to, or for which the use and enjoyment of, is intended for members of the general public, as distinguished from controlled use or access restricted to members of the homeowners association.

Revenue Ruling 73-306, 1973-2, C.B. 185 held that a nonprofit organization that promotes the private benefit of its members was not primarily engaged in activities for the common good and general welfare of the people of the community.

Your membership is limited to property owners and residents of the [REDACTED] subdivision; your common areas are not open for use and enjoyment of the general public; the organization has a provision to enforce restrictive covenants; and you do not serve a community bearing a reasonable and recognizable relationship to an area ordinarily identified as a government unit; therefore, you are organized and operated for the benefit of your individual members. While access to your subdivision is not physically barred to non-residents, it does not provide the public thoroughfares and access to common area is barred by a locked gate. The public benefit, if any, provided by your organization is insubstantial compared with

the private benefit afforded your members; therefore, you do not qualify for exempt status under section 501(c)(4) of the Code or under any related paragraph of the section 501(c).

Since your organization is not exempt, you are required to file Federal income tax returns on Form 1120. However, you may make an election under section 528 of the Internal Revenue Code to apply to you as a homeowners' association. The election is made by filing Form 1120-H annually.


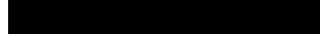
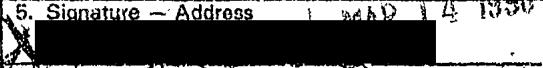

If you not agree with our proposed denial, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are to be represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney or tax information authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office.

If we have not received an appeal within 30 days, this will become our final determination letter.

Sincerely yours,

District Director

Enclosure:
Publication 892

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested. 1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)	
3. Article Addressed to: 	4. Article Number 
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature - Address 	8. Addressee's Address (ONLY if requested and fee paid)
6. 	
7. Date of Delivery 3-14-86	